Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51

COMMENTS OF COMCAST CORPORATION

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Comcast Corporation and its affiliates ("Comcast") hereby submit these comments in response to the Further Notice of Proposed Rulemaking released by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding.[1]

I. INTRODUCTION AND SUMMARY

Comcast applauds the Commission for initiating a proceeding to consider much-needed reforms to the current system for determining Universal Service Fund ("USF" or "Fund") contribution obligations. Concerns regarding the current regime are well-documented. As the Commission correctly notes, "[t]he evolution in the communications ecosystem has led to a series of stresses on the contribution system."[2] Indeed, the size of the Fund has grown significantly as the total assessable revenue base has declined. As a result, the contribution factor now imposes on consumer bills a surcharge that consistently exceeds fifteen percent. In addition, changes in technology and services have made administration of the current revenues-based system increasingly "burdensome" and "complex."[3]

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1 *Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, FCC 12-46 (rel. Apr. 30, 2012) ("FNPRM" or "Further Notice").

2 *Id.* ¶ 4.

3 *Id.*

Comcast looks forward to working with the Commission and other parties in this proceeding to develop a contribution regime that:

- reduces the contribution burden on consumers,
- promotes broadband adoption and efficient broadband investment,
- is competitively neutral,
- can be sustained in an industry characterized by rapid technological change, and
- minimizes the impact on economic decisions made by both providers and their customers.

To advance these goals, Comcast recommends that the Commission carefully explore alternatives to the current revenues-based system unless the Commission can develop and implement workable reforms that effectively address the economic distortions and other problems that afflict the existing regime. A properly structured connections-based methodology may offer certain advantages over a revenues-based methodology, but it too poses concerns if not carefully implemented. For example, the Commission should not adopt a connections-based system that imposes different contribution obligations on residential broadband consumers based on speed or capacity tiers or employs a service-based definition of "connection." In addition, the record in this proceeding indicates that a numbers-based methodology for USF contributions may advance several of the FCC's public interest goals, such as limiting the burden on consumers and avoiding distortion of consumer demand. The Commission should give serious further consideration to that approach. Finally, to the extent that the record in this proceeding gives rise to concerns about the relative burdens imposed on residential and small business consumers as compared with medium and large enterprise customers under a strictly numbers-based approach, the Commission also should seriously consider a "hybrid" approach. For example, the record may show that a system that assesses residential and small business consumers on the basis of numbers while assessing larger commercial customers solely on the basis of connections would strike an equitable balance.

II. THE COMMISSION SHOULD ENSURE THAT ITS CONTRIBUTION REFORMS ARE CONSISTENT WITH ITS PROPOSED POLICY GOALS

The Commission proposes three primary principles to guide its reform of the universal service contribution system: (1) ensuring fairness and competitive neutrality; (2) making compliance with, and administration of, the contribution system more efficient; and (3) creating a sustainable system.[4] Comcast strongly supports the Commission's emphasis on these key objectives and further recommends that the Commission ensure that its revisions to the current system are designed to maximize broadband adoption and investment and permit the free operation of marketplace forces.

A. Fairness and Competitive Neutrality

Section 254 of the Communications Act of 1934, as amended (the "Act" or "Communications Act") requires contributions to be assessed "on an equitable and nondiscriminatory basis."[5] In reforming the contribution methodology, the Commission should endeavor to fulfill this statutory directive by both: (1) ensuring that the new regime does not unfairly advantage or disadvantage one provider or technology over another;[6] and (2) minimizing the "possibility that carriers with universal service obligations will compete directly with carriers

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4 *Id.* ¶¶ 22-25.

5 47 U.S.C. § 254(d).

6 *See, e.g., Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1104 (D.C. Cir. 2009) ("The competitive neutrality principle requires that 'universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor or disfavor one technology over another.'") (quoting *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 47 (1997)).

without such obligations."[7] Indeed, as the Commission recognizes, "treating similar or substitutable services differently . . . may create unintended market distortions."[8]

B. Efficiency

The current contribution system can be difficult for providers to navigate and consumers to understand. Further, the record reflects that similarly situated providers have begun to interpret the Commission's contribution requirements in different ways as the complexity of the USF system has increased (*e.g.*, the treatment of bundled services, whether services such as MPLS are assessable, establishing the value of prepaid calling cards).[9] A key objective of the Commission's reform efforts, thus, should be to simplify the contribution system and minimize uncertainty about application of the contribution rules. The Commission correctly notes that "[c]learer, simpler rules that can be applied in new situations could deter gaming of the system and save consumers, companies, and the government money."[10]

C. Sustainability

In considering reforms, the Commission also must aim to create a system that will "adapt to market changes and stabilize the contribution base."[11] In keeping with the National Broadband Plan's directive, "[w]hichever path the FCC ultimately takes, it should take steps to minimize opportunities for arbitrage as new products and services are developed and remove the

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7 *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 783 (1997) ("USF First Report and Order").

8 FNPRM ¶ 24.

9 *See id.* ¶ 25.

10 *Id.* ¶ 23.

11 *Id.* ¶ 25.

need to continuously update regulation to catch up with technology and the market."[12] To ensure sustainability, the Commission also must not use reform of the contribution system as a basis for increasing the size of the Fund.[13] Rather, the Commission must continue to maintain the budget established for the Connect America Fund ("CAF") and high-cost support mechanisms in the ICC/USF Order[14] and take measures to reduce the size of the Fund wherever possible so as to minimize the burden on consumers.[15]

D. Additional Goals

In addition to the foregoing policy goals, the Commission should continue to adhere to two additional principles that have guided the agency in other proceedings. First, the

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12 FCC, *Connecting America: The National Broadband Plan*, at 149 (rel. March 16, 2010), *available at*: <http://download.broadband.gov/plan/national-broadband-plan.pdf> ("National Broadband Plan").

13 *See Alenco Commc'ns, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) (Excessive funding may violate the statutory sufficiency requirements, because "excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market.").

14 *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶¶ 559-563 (2011) ("ICC/USF Order"); *see also High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Universal Service Funds for Customers of Wyoming's Non-Rural Incumbent Local Exchange Carrier*, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, ¶ 28 (2010) ("If the universal service fund grows too large, it will jeopardize other statutory mandates, such as ensuring affordable rates in all parts of the country, and ensuring that contributions from carriers are fair and equitable. This issue is not theoretical. With the contribution factor above 15 percent, the Commission has to balance the principles of section 254(b) to ensure that support is sufficient but does not impose an excessive burden on *all* ratepayers.") (emphasis in original).

15 *See* ICC/USF Order ¶ 57 (adopting a performance goal "to minimize the overall burden of universal service contributions on American consumers and businesses"); *see also* Comments of Comcast Corporation, WC Docket No. 10-90, at 12 (Apr. 18, 2011) (recommending a cap on the budget for the CAF and high-cost programs to "ease the financial onus on consumers").

Commission should strive to implement reform in a manner that will promote broadband adoption and investment. The Commission focused on promoting broadband adoption and deployment when it created the CAF and reformed the high-cost distribution mechanisms,[16] and it must maintain that focus in reforming the contribution mechanism. Indeed, the Commission is directed by statute to "ensure that all people of the United States have access to broadband capability" and to take actions designed to achieve "maximum utilization of broadband . . . service by the public."[17]

Second, the Commission should seek to adopt reforms that, to the maximum extent possible, will permit marketplace forces to operate free of unnecessary regulatory interference or other distortions that can alter economic decisions by consumers and providers. Recognizing that "government cannot predict the future," the National Broadband Plan acknowledged the central role that private companies and consumers have in shaping the evolution of broadband.[18] The Commission, thus, should take into account the potential for various contribution reform options to distort consumer demand or depress providers' incentives to innovate and invest, and should avoid taking actions that potentially could have these negative effects.

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16 *See* FNPRM ¶ 26 ("[W]e are guided by our overarching goal of ensuring the delivery of affordable communications to all Americans. This includes ensuring that any reforms to the contributions system must safeguard the core Commission objectives of promoting broadband innovation, investment, and adoption." (footnotes omitted)).

17 American Recovery and Reinvestment Act of 2009, § 6001(k)(2), codified at 47 U.S.C. § 1305(k)(2).

18 National Broadband Plan at 5; *see also* USF First Report and Order ¶ 846 ("We seek to avoid a contribution assessment methodology that distorts how carriers choose to structure their businesses or the types of services that they provide.").

III. THE COMMISSION'S PROPOSALS WILL NOT RESOLVE THE FLAWS IN THE REVENUES-BASED SYSTEM

As noted above, the telecommunications marketplace has evolved significantly since the current contribution mechanism was implemented. The Commission finds that these developments have compromised the effectiveness of the revenues-based methodology,[19] a conclusion with which Comcast concurs. The Commission's proposals to update and modify the current system, however, are both problematic and likely ineffective and, consequently, would undermine achievement of the Commission's policy goals.[20]

A. Defining Assessable Services

A fundamental problem of the current revenues-based approach is the difficulty in defining assessable services. As the Commission acknowledges, "[t]he question of who should contribute is at the core of much of the uncertainty and competitive distortions that plague the system today."[21] Despite recognizing the current system's problems, both proposals the Commission advances for defining assessable services going forward have significant shortcomings.

1. <u>Case-by-Case Approach</u>

The case-by-case approach is essentially the system that is in place today.[22] Using this approach, the Further Notice proposes to resolve the contribution status of several services "for

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[19] FNPRM ¶¶ 18-21.

[20] In addition to the concerns highlighted below, reforming the revenues-based system also would require the Commission to develop a way to allocate revenues accurately between intrastate and interstate jurisdictions, so that purely intrastate revenues remain exempt from the federal USF assessment. *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 409, 446-48 (5th Cir. 1999) ("*TOPUC v. FCC*").

[21] FNPRM ¶ 28.

[22] *Id.* ¶ 37 (seeking comment on "continuing this general approach" of addressing contribution obligations on a service-by-service basis).

which contribution obligations are currently subject to dispute."[23] The case-by-case approach, however, is inherently backward-looking, as it can only address the contribution status of services that already have been introduced. Accordingly, even if the Commission were to provide clarity on the status of the specific services discussed in the Further Notice, there would continue to be uncertainty going forward as new services are developed and offered. The inability to predict whether USF contribution obligations will apply to new and innovative services unnecessarily complicates their introduction to the marketplace. Moreover, the ongoing need to update the list of assessable services as technologies and services evolve would continue to impose administrative burdens.

2. Definitional Approach

As an alternative to the case-by-case approach, the Commission proposes to craft a definitional rule that specifies which providers must contribute without enumerating the assessable services.[24] This approach likely would require the Commission to issue frequent clarifications as questions arise about the applicability of the definition to particular services. Therefore, like the case-by-case approach, a broad definitional approach is not likely to assist providers in predicting whether new services would be subject to contribution assessments. In addition, the use of this approach may increase the risk that different contribution obligations will be assessed on services that compete with one another and, thus, be inconsistent with the Commission's goals of ensuring competitive neutrality and minimizing arbitrage opportunities.

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[23] *Id.*

[24] *Id*. ¶¶ 74-76. The FNPRM seeks comment on the following definition: "Any interstate information service or interstate telecommunications is assessable if the provider also provides the transmission (wired or wireless), directly or indirectly through an affiliate, to end users." *Id.* ¶ 75.

3. Service-Based Definitions Generally

Irrespective of which definitional approach is employed, the process of defining assessable services, which is unavoidable under a revenues-based approach, may lead to unintended and undesirable consequences. For example, the Further Notice discusses requiring "contributions on the full retail revenues of an information service that provides interstate telecommunications" as one alternative approach to assessing enterprise information services implemented with MPLS protocols.[25] By its terms, however, this proposal would sweep in information services that do not use MPLS protocols, but simply have an interstate telecommunications component, such as an alarm monitoring service. Further, in contrast to MPLS-enabled services, this approach would assess services in which there is no "nexus" between the information and underlying transmission components. Put simply, the constant and rapid development and deployment of new services and technologies will present a daunting challenge to the Commission's ability to administer a workable revenues-based contribution system that avoids competitive inequities and undesirable economic consequences, whether assessable services are broadly defined or specifically identified.

B. Bundling

Given the proliferation of bundled service offerings, the Commission and virtually all industry participants now recognize the difficulty of establishing fair and easily administrable rules to govern the apportionment of assessable and non-assessable services that are offered as a bundle at a unitary price.[26] The Commission's proposed options for addressing this difficulty,

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[25] *Id.* ¶ 115.

[26] *See, e.g., id.* ¶ 19 ("Bundling of intrastate and interstate voice calling with data services and equipment has further complicated the Commission's and providers' ability to identify the revenues that should be included in the contribution base."); Comments of the United States Telecom Association, WC Docket No. 05-337, at 12 (Nov. 26, 2008) ("Today, bundled offerings

however, could hamper the ability of providers to offer service packages that consumers prefer and create competitive inequities without solving the problems they are intended to rectify.

1. Assessing All Bundled Revenues

The Commission first proposes that contributors treat all bundled revenues as telecommunications service revenues for purposes of determining their universal service obligations.[27] A fundamental flaw of this proposal is that it could result in assessments on services or products that are beyond the scope of the Commission's statutory authority to assess under section 254 of the Act. For example, Comcast and other facilities-based service providers currently offer consumers packages at a unitary price that include both multichannel video services and services that include a telecommunications component, such as high-speed Internet access service.[28] Section 254 does not empower the Commission to impose a USF contribution obligation on services subject to the FCC's Title VI jurisdiction.

Assessing all bundled revenues also would deter providers from offering bundles that include a mixture of assessable and non-assessable services. Thus, the proposal would create a substantial risk that the options available to consumers would be influenced significantly by regulatory decisions, rather than consumer preferences. The Commission previously has found that eliminating restrictions on bundling allows "carriers to compete vigorously and fairly . . . by

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including local and long distance, state and interstate services, and telecommunications services as well as information services make the distinctions required by the current system difficult and confusing."); Comments of Comcast Corporation, WC Docket No. 05-337, at 31 (Nov. 26, 2008); Comments of Global Crossing, WC Docket No. 05-337, at 13 (Nov. 26, 2008) ("In today's world of bundled services, IP networks, and global communications, it has become impossible for an integrated service provider to determine with any degree of confidence what portion of its revenue is assessable as interstate, end user, telecommunications revenue.").

27 FNPRM ¶ 106.

28 *See, e.g., Comcast Triple Play, Bundles, and Packages*, *available at*: <http://www.comcast.com/Corporate/Learn/Bundles/bundles.html> (last visited July 9, 2012).

offering bundles . . . that meet demonstrated customer demand."[29] Despite this conclusion, the Commission now proposes an allocation option that would, by the Commission's own admission, undercut competition and consumer choice.

Deterring providers from offering certain bundles also could adversely impact innovation. As the Commission has recognized, allowing consumer demand in the marketplace to determine bundled offerings can "promote the deployment of advanced telecommunications services,"[30] reducing "the initial costs of new technology until sufficient demand for it develops [and] thereby driving down prices for equipment and services to competitive levels."[31]

2. Allocating Bundled Revenues Consistent with Stand-Alone Pricing

Alternatively, the Commission proposes that contributors report revenues from bundled offerings based on the unbundled service offering prices, with no discount from the bundled offering being allocated to assessable services.[32] Like the proposal described above, this approach to allocating revenues among bundled services could introduce economic distortions by encouraging providers to alter the components that are included in a bundle in response to the contribution mechanism rather than offering the package of services that consumers desire. Again, the Commission correctly has found that "the Commission's rules should not

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29 *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, Report and Order, 16 FCC Rcd 7418, ¶ 24 (2001) ("CPE Bundling Order"); *see also id*. ¶ 19 (repealing bundling restrictions "will promptly allow consumers to pick and choose among service and equipment providers that offer packages suited to their needs").

30 *Id.* ¶ 34.

31 *Id*. ¶ 35.

32 FNPRM ¶ 106.

unnecessarily restrict consumer choice"[33] and that the contribution assessment methodology should not distort providers' service offerings.[34] Both of those policy goals likely would be undermined by the proposed allocation approach.

Moreover, the stand-alone pricing approach likely would harm consumers in at least two additional ways. First, this allocation method would reduce the full consumer benefit of bundled pricing by charging universal service fees on assessable services as if the consumer had not realized any price reduction from purchasing the service as part of a bundle. By contrast, if part of the bundled discount were attributed to prices for the assessable services in the bundle, the consumer would benefit from the corresponding reduction in USF fees.

Second, unless the Commission is prepared to restrict the assessment basis for state and local franchise authorities, the stand-alone option also is likely to increase the consumer contribution burden by assessing providers – and ultimately consumers – on the basis of more revenues than providers actually receive. Take, for example, a provider that offers voice and cable video in a bundle for \$100 and offers each product separately for \$60. Today, a service provider may reasonably determine that \$50 of the bundle is subject to USF assessment (*i.e.*, the voice component of the bundle) and \$50 of the bundle is subject to local franchise taxes (*i.e.*, the video component of the bundle). Under the stand-alone pricing option, \$60 of the bundle would be subject to USF assessment and \$50 of the bundle likely would continue to be subject to local franchise taxes. In short, the provider would be subject to assessments on \$110 of revenues when it only received \$100 for the sale of the bundle and would, in turn, pass through an increased amount to the end user to recoup these assessments.

33 CPE Bundling Order ¶ 16.

34 USF First Report and Order ¶ 846.

Finally, the stand-alone option would perpetuate existing and create new administrative difficulties. Billing systems, for example, typically are designed to work with data that are included in a consumer's statement, such as the retail price of a service the consumer purchases. As a result, a provider's billing system may not be able to apply a percentage assessment to an amount (the stand-alone price) that does not appear on a customer's bill without significant and costly upgrades. Injecting this type of complexity would undercut the Commission's goal of making "compliance with and administration of the contribution more efficient."[35] Moreover, consumers likely would be confused about how their USF assessment was calculated, because the revenue basis for the assessment (*i.e.*, the stand-alone price) would not appear on their bills. It would be particularly difficult to explain to those voice and video customers described above that they are being assessed on a revenue amount that exceeds their total bill.

C. Wholesale and Retail Distinctions

The Commission's policy of excluding wholesale revenues from contribution requirements has proven to be administratively complex and difficult to enforce.[36] Each of the Commission's proposals to address these difficulties, however, raises additional concerns.

1. Value-Added Approach to Assessing Contributions

The Further Notice seeks comment on whether to assess "value-added" revenues rather than "end-user" revenues such that each telecommunications provider – wholesalers and resellers alike – would contribute based on the value they add to the service.[37] The artificial pricing assumptions required by the value-added approach would appear to create considerable implementation difficulties, costs, and potential distortions. Specifically, the value-added

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35 FNPRM ¶ 23.

36 *Id.* ¶¶ 145-146.

37 *Id.* ¶ 152.

proposal assumes that the wholesale service will be resold without adding any value other than what is purely necessary to turn a wholesale service into a retail service. It ignores other ways of adding value that provide functionality above and beyond the pure (and assessable) telecommunications service. For example, a large enterprise customer could be offered a single integrated package that provides voice, data transmission, managed e-mail, corporate intranets, website and data hosting, managed applications, video conferencing, and related equipment.[38] Thus, as proposed, the value-added approach underestimates the difficulty of determining the amount of value the assessable activity provided by the downstream firm adds to a finished retail service. Moreover, apportioning 100 percent of the difference between the wholesale and retail service price to value added by an assessable service likely would result in an inequitable over-assessment, because it would inflate the relative value contributed by the assessable service to the retail product.

In contexts in which a value-added approach has been implemented efficiently (*e.g.*, a VAT), all value added has been assessed. Under the Commission's proposal, by contrast, only some of the value added would be assessed, increasing the likelihood of creating distortions.[39] Because the value-added approach should not involve assessments on all components in the production chain, there would be an incentive to attribute added value to non-assessable inputs where possible. This, in turn, could subject competing services and products to different

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[38] *Id*. ¶ 41.

[39] The Commission rejected a similar approach in 1997 because of the distortions it was likely to cause. *See* USF First Report and Order ¶ 850 (concluding that "in practice, the net telecommunications revenues approach is likely to cause distortions that could be avoided by using the end-user telecommunications revenues approach"). The Commission also recognized, and sought to avoid, the administrative complexities involved in such an approach. *See id.* ¶ 848 (determining that the "end-user telecommunications revenues will still be easier to administer and less burdensome than the net telecommunications revenues approach").

contribution burdens, raising issues of competitive neutrality and potentially distorting consumer demand due to the price changes that may result from differing contribution assessments.

2. Contributor Certificates

As an alternative to the value-added approach, the Commission proposes modifications to the current method of assessing wholesale revenues.[40] Specifically, in response to complaints that the current certification process is burdensome and ineffective,[41] the Commission proposes several requirements designed to both clarify the certification process and reduce opportunities for purchasers of wholesale telecommunications to claim falsely that they directly contribute to the Fund.[42] While in Comcast's view a certification process is preferable to the value-added approach, even the proposals to revise the certification process could be problematic.

For example, the Further Notice recognizes that the use of wholesale inputs may change after a certification is made, potentially changing the contribution status of the certifying entity with respect to the purchased service.[43] To address this circumstance, the Commission proposes that wholesale customers be required to notify the wholesale provider within 30 or 60 days of a change in contribution status. Compliance with the Commission's proposal, however, could prove to be administratively burdensome, essentially requiring a wholesale customer to calendar its certification filings and continuously monitor its contribution status with respect to each and every wholesale input. Further, if the contribution status of the certifying entity were to change, it could be difficult for the wholesale provider to determine which portion of the wholesale

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40 Under the current contribution system, wholesale providers' revenues are exempt from contribution requirements only if wholesale providers have reliable proof, such as certifications from their customers, indicating that the service purchased will be resold and the customer will contribute to the Fund. *See* 2012 FCC Form 499-A Instructions at 21-22.

41 FNPRM ¶ 166.

42 *Id.* ¶¶ 168-178.

43 *Id.* ¶ 173.

revenues would become assessable, and retroactive billing adjustments could be necessary to pass through universal service charges. If the Commission maintains the use of contributor certificates, it would need to develop an administratively simpler mechanism for addressing this type of change in a certifying entity's contribution status.

D. Broadband Adoption and Utilization

In addition to the problems discussed above and identified in the Further Notice, the revenues-based approach also could undermine the Commission's aim of ensuring that contribution reforms "safeguard the core Commission objectives of promoting broadband innovation, investment and adoption."[44] The Commission, for example, seeks comment on assessing contributions on broadband Internet access services, but acknowledges concerns that doing so may discourage adoption of broadband services for some consumers and, in turn, reduce broadband deployment incentives for providers.[45] Such concerns about the effect of assessing broadband services are particularly acute if a revenues-based contribution methodology continues to be used.

A revenues-based model essentially results in usage-based fees. If broadband Internet access services are assessed under such a model, the Commission's USF contribution regime would create an economic disincentive for consumers to subscribe to broadband services and also deter them from purchasing higher-speed offerings that are more expensive. The adverse effect on adoption incentives would be particularly acute for residential consumers,[46] whose demand for broadband services is likely quite elastic.[47]

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44 *Id.* ¶ 26.

45 *Id.* ¶ 68.

46 Small business consumers, such as those with fewer than ten lines, are also more likely to be more sensitive to USF assessments than enterprise customers. Comcast, therefore,

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The Commission's proposals for reforming the revenues-based USF contribution system highlight the many flaws of this methodology. Indeed, over half of the FNPRM is focused on reforms needed to make the existing approach workable. As explained above, the measures proposed in the FNPRM do not appear likely to resolve the economic distortions and other problems that afflict the current revenues-based approach and, in fact, could exacerbate them. Accordingly, unless the difficult task of developing an administratively workable solution that addresses the concerns outlined above is accomplished, the Commission should devote serious consideration to other contribution methodologies.

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encourages the Commission to structure its reforms in a way that treats residential and small business consumers on the same basis in order to avoid the potentially disruptive impact that a new contribution system may have on small businesses. *See, e.g., The Impact of Broadband Speed and Price on Small Business*, U.S. Small Business Administration, Office of Advocacy, at 61 (Nov. 2010) ("As the United States undertakes the process of reforming the Universal Service Fund . . . and its related programs, the needs of small business should be taken into account."), *available at*: <http://www.sba.gov/sites/default/files/rs373tot_0.pdf>; Comments of the Office of Advocacy, U.S. Small Business Administration, WT Docket No. 12-69, at 2 (May 24, 2012) ("Given the small businesses imperative for access to affordable, high quality broadband services, [the U.S. Small Business Administration Office of] Advocacy encourages the FCC to adopt and enforce policies that ensure robust competition in every broadband technology sector."); Comments of Covad Communications Company, GN Docket Nos. 09-47, at 6 (Nov. 4, 2009) (proposing "that the Commission establish policies that support small business broadband adoption"); *see also* Statement of FCC Chairman Julius Genachowski, U.S. Senate Committee on Small Business and Entrepreneurship, *Connecting Main Street to the World: Federal Efforts to Expand Small Business Internet Access* , at 1 (April 27, 2010) ("It is vital to ensure that small businesses have robust and affordable access to broadband communications."), *available at*: <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-297733A1.pdf>; Remarks of Chairman Julius Genachowski, FCC, *Small Business and Broadband: Unlocking a Key Engine of Job Creation in the 21st Century*, at 2 (March 4, 2010) ("Many small businesses that do have broadband access have concerns about their broadband speeds, price and choice."), *available at*: <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296675A1.pdf>.

[47] *See, e.g.,* Austan Goolsbee, *The Value of Broadband and the Deadweight Loss of Taxing New Technology*, 5 B.E. J. ECON. ANALYSIS & POLICY 1505 (2006) (calculating a high elasticity of demand for residential broadband services in the top 50 markets in the United States ranging from 2.15 to 3.68), *available at*: <http://faculty.chicagobooth.edu/austan.goolsbee/research/broadb.pdf>.

IV. A PROPERLY STRUCTURED CONNECTIONS-BASED METHODOLOGY COULD BE PREFERABLE TO A REVENUES-BASED SYSTEM

A connections-based contribution methodology, in which providers contribute a prescribed amount per connection to a communications network, offers certain advantages relative to a revenues-based system. A connections-based system, however, also poses risks that could jeopardize these potential benefits.

A. Benefits

The Commission has noted that "a connection-based assessment may address the difficulty of applying regulatory distinctions inherent in the existing system to new services and technologies."[48] For example, in contrast to a revenues-based regime, a connections-based system that uses a facilities-based definition of "connection" has the advantage of avoiding the complications of assessing revenues generated from bundles that include both assessable and non-assessable services. Such a system, however, would not eliminate entirely the need to identify and classify the services delivered over a connection. For example, the Commission would still need to identify and exclude end user connections that are used exclusively to provide non-assessable services, such as multichannel video and jurisdictionally intrastate private line

[48] *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format*, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, ¶ 17 (2002) ("2002 Order and FNPRM"); *see also* FNPRM ¶ 265.

services.[49] Aside from those limited circumstances, however, the Commission would not need to determine the type or number of services provided over a "connection."

Additionally, a connections-based system may offer other advantages over a revenues-based approach. For example, a connections-based assessment could be more transparent than a revenues-based system, providing consumers with the ability to better understand the collection method.[50] Further, because service providers would know that the nature of a service provided over a connection would not affect their contribution obligation (save for connections used exclusively for non-assessable services), the development of new services and new service packages would not be affected by concerns about the possible imposition of a USF contribution obligation.[51] A connections-based system also may be better suited to an industry that is characterized by ongoing, rapid changes in service offerings, because it would focus on physical connections with a communications network rather than the services provided over those connections.[52] Finally, "[b]ecause the number of connections historically has been more stable than interstate revenues, a connection-based assessment may provide a more predictable and sufficient funding source for universal service" than the current system.[53]

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49 *See TOPUC v. FCC,* 183 F.3d at 446-48.

50 *See, e.g.,* 2002 Order and FNPRM ¶ 17 ("a connection-based assessment . . . may make the recovery process more understandable for consumers"); Comments of Sprint Corporation, CC Docket No. 96-45, at 7 (Apr. 22, 2002) ("a per-connection charge on end users' bills will be more understandable for consumers than the current system, because it should remain relatively constant over time and will be similar to other per-line charges currently on consumers bills") ("2002 Sprint Comments").

51 *See, e.g.*, 2002 Order and FNPRM ¶ 17 (a connections-based methodology "may provide contributors with greater certainty, reduce administrative costs, and avoid marketplace distortions").

52 Given the rapid pace of technological innovation, maintaining a speed tier structure that accurately reflects marketplace realities likely would require frequent, continuous updates.

53 2002 Order and FNPRM ¶ 71; *see also id*. ¶ 17; FNPRM ¶ 264; Comments of the Information Technology Association of America, CC Docket No. 96-45, at 5 (Apr. 22, 2002)

B. Implementation Concerns

A connections-based system also has the potential to cause significant competitive distortions and consumer harms, particularly if improperly designed speed or capacity tiers are utilized or a service-based definition of "connection" is adopted.[54] As the Ad Hoc Telecommunications Users Committee notes, the "details of implementation will determine fair application of contribution obligations" under a connections-based system.[55]

1. Speed or Capacity Tiers

A connections-based methodology that imposed different USF assessments on residential and small business connections based on transmission speed or capacity could have a significant adverse impact on efficient consumer decision-making. Accordingly, Comcast urges the Commission to reject the use of speed or capacity tiers for such consumers. Moreover, to the extent that the Commission decides to consider the use of a tiered assessment scheme for enterprise customers, it should ensure that the rate structure is designed to avoid deterring enterprise customers from subscribing to higher speed offerings.

a. *Residential and Small Business Consumers*

A connections-based assessment system that imposed higher fees on residential and small business broadband Internet access connections with faster transmission speeds clearly would put downward pressure on the demand among those consumers for higher-speed services and,

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("[T]he per-connection assessment rate imposed on telecommunications carriers should remain reasonably constant over time. This, in turn, will make it possible to provide greater stability and predictability for telecommunications users."); 2002 Sprint Comments at 6.

[54] As discussed *supra* with respect to a revenues-based methodology, the Commission also would have to ensure that jurisdictionally intrastate service offerings are not assessed under a connections-based approach.

[55] Letter from Andrew M. Brown, Counsel, Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at Attachment (Apr. 13, 2012).

consequently, would discourage them from making more intensive use of broadband services.[56] These results would be flatly inconsistent with the National Broadband Plan's goal of promoting greater broadband utilization.[57]

A system that uses speed or capacity tiers for residential or small business consumers also would reduce providers' incentives to deploy and upgrade broadband facilities to those customer segments in at least two ways. First, because "bandwidth supply and demand are co-dependent,"[58] depressing consumer demand for higher-speed services as described above also would depress providers' incentives to offer such services. In other words, improperly designed tiers could have a significant adverse impact on the "virtuous cycle" that is at the heart of the National Broadband Plan: increased speeds and innovation in broadband offerings lead to increased end user demand, which in turn leads to still faster speeds and greater innovation.[59]

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56 *See* Mossberger, K., C.J. Tolbert and R.S. McNeal, *Digital Citizenship: The Internet, Society and Participation*, at 128 (MIT University Press 2008) ("Higher-speed connections promote more extensive use of the Internet."); *see also* Comments of the City of Chicago, GN Docket No. 09-51, at 5-6 (Dec. 2, 2009) ("Many applications require higher bandwidth (*i.e.*, downloading graphics and documents, submitting online forms, making commercial transactions and payments, accessing many websites, or viewing videos online can be difficult with dial-up access). These applications may help to drive Internet adoption, but without high-speed access they are inaccessible.").

57 As the National Broadband Plan emphasizes, "[p]romoting [broadband] access and adoption are necessary steps, but utilization is the goal." National Broadband Plan at 171. *See also id.* at 170 ("Getting people online is a critical first step, but the goal must be to *keep* people online through sustainable efforts that promote utilization and help each user derive value from the Internet in his or her own way.") (emphasis in original). Both the Commission and the National Broadband Plan also have emphasized the importance of speed to consumers' broadband utilization. *See, e.g., Consumer and Governmental Affairs Bureau Seeks Comment on "Need for Speed" Information for Consumers of Broadband Services*, Public Notice, 26 FCC Rcd 5847 (2011) (noting that "[c]onsumers rely on Internet-based applications and services that place a wide range of demands on broadband networks"); National Broadband Plan at 9 (establishing as a goal that "100 million U.S. homes should have affordable access to actual download speeds of at least 100 Mbps and actual upload speeds of at least 50 Mbps by 2020").

58 National Broadband Plan at 84.

59 *Id*. at 15-16.

Second, residential speed tiers may cause providers unilaterally to limit the speed of their broadband offerings in order to avoid a higher USF assessment that would harm their ability to compete with rival slower-speed offerings.[60] Discouraging the deployment of higher-speed, more technologically advanced broadband services plainly is inconsistent with the National Broadband Plan and the Commission's broadband policies. In light of the magnitude of these potential harms, Comcast urges the Commission to reject the use of speed or capacity tiers for residential and small business customers.

b. *Enterprise Consumers*

If the Commission decided to adopt speed or capacity tiers for enterprise connections, it must be careful to design them so that they do not undermine the efficient operation of the competitive marketplace for those services. The Commission has recognized the potentially distortive effects of tiered assessment schemes with respect to multi-line business customers, noting that "a tiered approach for multi-line business assessment may skew marketplace behavior."[61] Specifically, "[b]ecause movement to the next tier would result in a significant increase in contribution obligations, a tiered approach may deter multi-line business customers from purchasing certain thresholds of additional capacity."[62] Accordingly, prior proponents of a tier structure, such as AT&T, have recognized appropriately that tiers would have to be structured in a manner that minimizes "the possibility that the USF fee associated with a

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60 *See, e.g.*, Comments of MegaPath Inc., WC Docket No. 05-337, at 3 (Nov. 26, 2008) ("A system that taxes broadband speeds would deter investment and development of higher capacity broadband services.").

61 2002 Order and FNPRM ¶ 54.

62 *Id*.

particular connection would distort the market by giving customers incentives to purchase different services simply because of the differences in regulatory fees."[63]

2. Service-Based Definition of "Connection"

To ensure competitive neutrality, the Commission would need to adopt a facilities-based, rather than service-based, definition of "connection."[64] A service-based definition could lead to inequitable double assessments,[65] such as separate assessments for a broadband Internet connection and a VoIP connection provided over the same physical plant, in contrast to a facilities-based approach that would impose a single assessment on the same consumer with the same services. Notably, one of the Commission's considerations in crafting the current methodology was to avoid "double counting" revenues,[66] and the Commission should continue to be mindful of the competitive distortions that would result from imposing such double assessments under any contribution system. This type of double assessment also could undermine the National Broadband Plan's goal of "bringing all citizens online and maximizing their utilization of broadband applications."[67] Put simply, consumers are less likely to utilize multiple broadband-based services if they are separately assessed for each such distinct use.

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63 Comments of AT&T Inc., WC Docket No. 05-337, at 47 (Nov. 26, 2008).

64 While Comcast focuses in this section on the serious potential harms associated with use of a service-based definition of "connection," use of a facilities-based definition also would raise some concerns. For example, non-facilities-based service providers, such as over-the-top VoIP services, would not contribute to the Fund as they do today under a facilities-based definition of "connection." Permitting over-the-top VoIP services to avoid assessment would be inconsistent with the Commission's goal of achieving competitive neutrality, in this instance with facilities-based VoIP providers. In contrast, a numbers-based or hybrid approach, discussed *infra,* would avoid this drawback.

65 As noted above, the Commission would have to verify that a "connection" was not being used exclusively to deliver a non-assessable service. Aside from that determination, however, the nature and number of services being provided over a connection would be irrelevant.

66 FNPRM ¶ 159.

67 National Broadband Plan at 167.

Moreover, adopting a service-based definition of "connection" would revive many of the flaws in the existing system. The Commission itself recognizes some of these difficulties, noting that a service-based definition may "raise questions regarding whether particular offerings were one 'service' or multiple bundled services."[68] A service-based definition also inherently would require the Commission to determine "who should contribute" by defining what constitutes an assessable service, a determination that injects much uncertainty into the contribution system. Similarly, the definition's use of the term "end user" would perpetuate "some of the challenges [that exist] under the current revenue-based system," including "the difficulty of determining whether a customer is an end user or reseller of specific services for purposes of USF contribution obligations."[69]

V. A NUMBERS-BASED USF CONTRIBUTION MECHANISM COULD OFFER SIGNIFICANT BENEFITS TO CONSUMERS

The substantial record in this proceeding highlights a number of potential benefits of a numbers-based approach, including stability, sustainability, administrative simplicity, and competitive neutrality. Exclusive reliance on a numbers-based approach, however, may not be desirable.

A. Competitive Neutrality

As the Commission has noted, a numbers-based methodology "could benefit consumers because it would be technologically and competitively neutral in that a consumer would pay the same universal service charge regardless of whether the consumer receives service from a cable

68 FNPRM ¶ 238.

69 *Id.* ¶ 241.

provider, an interconnected VoIP provider, a wireless provider, or other wireline provider."[70] By ensuring competitive neutrality, the shift to a numbers-based methodology "will enable residential consumers to choose the providers and provider types they want without regard to any artificial distortions that would otherwise be caused by differing contribution charges."[71] A numbers-based methodology also would eliminate the incentives that exist under the revenues-based approach for providers to move to services and technologies that are either exempt from contribution requirements or are subject to safe harbors.[72]

B. Simplicity and Ease of Administration

Adoption of a numbers-based approach could "benefit both consumers and contributors by simplifying the basis for assessments."[73] Indeed, this approach would bring some "welcome certainty and clarification" to the contribution process for all parties involved.[74] Consumers would benefit from "a clearer and more transparent understanding of what their USF contribution exactly is in their bill."[75] Providers would benefit from reduced administrative burdens, since fewer "reporting and contribution complications" would arise under a numbers-

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70 *Id.* ¶ 325. Consequently, as noted *supra,* a numbers-based approach would be more consistent with the Commission's goal of competitive neutrality than a connections-based approach that would exempt over-the-top VoIP providers.

71 *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, at Appendix A ¶ 108; Appendix B ¶ 55; Appendix C ¶ 104 (2008) ("2008 Order and FNPRM").

72 *See, e.g.*, Comments of Network Enhanced Telecom, LLP d/b/a NetworkIP, WC Docket No. 05-337, at 6 (Nov. 26, 2008) ("artificial distortions between platforms will be eliminated and a level playing field will be set for competition") ("NetworkIP Comments"); Comments of the Public Utilities Commission of Ohio, WC Docket No. 05-337, at 36-37 (Nov. 26, 2008) (the numbers-based proposal "will eliminate incentives under the existing framework to migrate to services and technologies that are currently exempt from the contribution mechanism").

based methodology than under the revenues-based system.[76] The Commission and USAC would benefit from an improved ability to administer and enforce the contribution methodology.[77] As AT&T and Verizon have noted, "a provider's compliance obligation will be easier to understand and more clear-cut than under today's system," which "will make the auditing process simpler, fairer, and much more effective."[78] A numbers-based system also would not require the Commission to define assessable services and update those definitions as technology evolves. Instead, each NANP number would be assessed irrespective of the underlying technology. As parties have noted, because "voice service is being offered in diverse platforms and the jurisdiction of a call may be unclear, the telephone numbered base contribution would appear to be the most logical route."[79]

C. Stability and Sustainability

A numbers-based approach could provide greater predictability regarding the size of providers' universal service contributions and the pass-through charges for end users. As the Commission noted in 2008, the number of NANP telephone numbers in use has shown "steady, stable growth" and would provide a relatively constant basis for estimating universal service

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73 FNPRM ¶ 325.

74 Comments of Hughes Network Systems, LLC, and Inmarsat, Inc., WC Docket No. 05-337, at 13 (Nov. 26, 2008).

75 Comments of the Michigan Public Service Commission, WC Docket No. 05-337, at 5 (Nov. 26, 2008) ("MPSC Comments").

76 Joint Comments of Alpheus Communications, L.P. and Covad Communications, WC Docket No. 05-337, at 8 (Nov. 26, 2008) ("Alpheus/Covad Comments"); *see also, e.g.*, USTA Comments at 11.

77 *See, e.g.*, Alpheus/Covad Comments at 8.

78 Letter from Mary L. Henze, AT&T Services, Inc. and Kathleen Grillo, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, Attachment B, at 4 (Sept. 11, 2008).

79 MPSC Comments at 5.

support amounts.[80] An assessment system based on telephone numbers, therefore, could provide necessary stability for the "long-term health of the Fund."[81] A numbers-based methodology also is well-suited to evolving in a competitively and technologically neutral manner that aligns with marketplace developments.[82]

D. Low Consumer Burden

So long as the amount of the per-number assessment is sufficiently low, a numbers-based approach should not have a material impact on consumer demand for voice services or broadband adoption.[83] The Commission could address any concerns regarding the level of the per-number assessment by prescribing the maximum assessment for residential and small business numbers and recovering the balance of the Fund from numbers assigned to enterprise services.[84]

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[80] 2008 Order and FNPRM at Appendix A ¶ 110; Appendix B ¶ 57; Appendix C ¶ 106.

[81] NetworkIP Comments at 5.

[82] Comments of Sprint Nextel Corporation, WC Docket No. 05-337, at 39 (Nov. 26, 2008) (a numbers-based system "can be adopted to changes so as to maintain contributions that are competitively and technologically neutral") ("2008 Sprint Comments"); Network IP Comments at 6 (a numbers-based system is "situated to neatly account for evolution in communications technology").

[83] *See, e.g.,* USTA Comments at 12 ("residential and lifeline customers actually fare better under [a numbers or numbers/connection hybrid system] than under the current system"). While a numbers-based approach does not explicitly assess broadband services, almost all broadband service customers have a telephone number and will, therefore, be assessed. Importantly, while the numbers-based methodology will not assess each and every broadband user, the vast majority of these users will be assessed in a way that does not create a significant deterrent to broadband deployment and adoption.

[84] The Commission itself has recognized the potential benefits of such an approach in other contexts, noting that this type of proposal "would make a contributor's contribution obligation more predictable and understandable for residential, single-line business, and mobile customers, while ensuring that the residual universal service funding requirement is assessed on multi-line business connections." 2002 Order and FNPRM ¶ 51.

Notwithstanding the advantages that a numbers-based system could offer, it also would shift the burden of funding universal service programs entirely to consumers that use services that require North American Numbering Plan numbers, particularly residential consumers. Services that rely on "un-numbered" connections, such as private line and special access links that enterprise customers employ, would not be assessed. Consequently, some might object to a purely numbers-based approach on the grounds that "un-numbered" services should be assessed as well.[85] We outline in the next section an approach that would address this concern.

VI. THE COMMISSION COULD IMPLEMENT A HYBRID METHODOLOGY TO AUGMENT A PURELY NUMBERS-BASED MECHANISM

A "hybrid" approach that combines elements of both the connections-based and numbers-based methodologies would spread the burden of financing the federal fund over a larger group of contributors than a numbers-only approach. Moreover, such an approach would give the Commission greater flexibility in designing a system that minimizes the potential harm to consumer adoption of broadband services. For example, the Commission could use a numbers-based approach to determine the contribution obligations for residential and small business customers, but assess medium and large enterprise customers solely on the basis of their connections to a communications network, including both connections associated with "numbered" services, such as PRI trunks, and connections associated with "unnumbered"

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85 *See, e.g.,* 2008 Order and FNPRM at Appendix A ¶ 130; Appendix B ¶ 78; Appendix C ¶ 126 ("[A]pplying a [pure] numbers-based approach to business services would result in inequitable contribution obligations. Specifically, certain business services that do not utilize numbers, or that utilize them to a lesser extent, would not be contributing to the universal service fund on an equitable basis."); *id*. at Appendix A ¶ 130 n.316; Appendix B ¶ 78 n.192; Appendix C ¶ 126 n.308 ("Business services such as private line and special access services do not typically utilize telephone numbers in the same manner as residential services, and would not contribute equitably to the universal service fund under a numbers-based approach. . . . Moreover, unlike residential services, which usually have one telephone number assigned per access line, business services do not usually have a number of telephone numbers assigned that aligns with the number of access lines utilized.").

services, such as DS3s.[86] As the Commission notes, "[a] hybrid numbers and connections system may have advantages over a numbers-only system insofar as it captures services that are provided without numbers."[87] Notably, such an approach also already has received significant support in the record.[88] As Sprint remarked in 2008, "[r]ecognizing that the current contribution methodology is broken, the industry generally has come to embrace a simpler contribution methodology based on numbers and connections."[89]

VII. THE COMMISSION SHOULD IMPLEMENT ADMINISTRATIVE REFORM PROPOSALS THAT WOULD INCREASE TRANSPARENCY AND MINIMIZE COMPLIANCE BURDENS

Irrespective of the contribution methodology adopted, the Commission should strive to implement administrative reforms that will increase transparency, facilitate understanding of the contribution requirements, and minimize compliance burdens. To that end, the Commission should: (1) provide a more transparent process for updating the Form 499 instructions; (2) continue quarterly adjustments to the contribution factor if a revenues-based system is retained; and (3) maintain the current oversight and accountability system.

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86 Consistent with our discussion, *supra*, the connections-based component of this hybrid would not impose a contribution obligation on connections that carry exclusively non-assessable traffic, such as a multichannel video connection or a jurisdictionally intrastate private line connection.

87 FNPRM ¶ 322.

88 *See, e.g.,* Comments of the American Cable Association, GN Docket No. 09-47, at 43 (Dec. 7, 2009) (supporting "the review and adoption of a hybrid telephone numbers/connections contribution methodology provided it is non-discriminatory, technology neutral and capped to collect the amount of revenue currently collected under the USF"); Comments of AT&T Inc., GN Docket No. 09-51, at 4 (Dec. 7. 2009) ("A contribution methodology that includes some form of connections component has the potential, depending upon how it is designed, to expand the universal service funding base in a manner that more closely reflects the changing cast of providers who benefit from the shift to broadband."); Comments of Covad Communications Company, GN Docket No. 09-47, at 4-6, 8 (Dec. 7, 2009); Comments of Cox Communications, Inc., GN Docket No. 09-47, at 2, 4-6(Dec. 7, 2009); Comments of Time Warner Cable Inc., GN Docket No. 09-47, at 5 (Dec. 7, 2009).

89 2008 Sprint Comments at 39.

A. Updating the Telecommunications Reporting Worksheet

Comcast agrees with those parties urging the Commission to provide a more transparent process for modifying the Form 499 instructions.[90] The Further Notice describes the Bureau's changes to the instructions as "non-substantive," asserting that the changes only serve to "provide guidance on issues of rule interpretation."[91] These changes, however, have become increasingly substantive, affecting the financial and competitive interests of contributors.[92] Moreover, USAC, in conducting audits, has rejected the "contention that the [Form 499] Instructions are merely guidance" and has asserted that the Commission "has consistently treated the instructions as binding."[93] Given the importance of the instructions to the industry and to fair application of whatever contribution methodology the Commission ultimately adopts, the Commission annually should identify any proposed changes to the instructions, explain the reasons for those proposed changes, and seek comment on the revised form and instructions.

B. Frequency of Contribution Factor Adjustments

The Commission seeks comment on whether the Commission should modify the USF contribution factor less frequently in order to provide greater predictability to contributors.[94]

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90 *See, e.g.*, Letter from David B. Cohen, Vice President, Policy, United States Telecom Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 6 (Mar. 28, 2012).

91 FNPRM ¶ 345.

92 *See, e.g.,* Reply Comments of AT&T Inc., WC Docket No. 06-122, at 3 (Nov. 9, 2010) (changes to revision deadline in the Form 499-A instructions constituted a substantive policy change); *see also* FNPRM ¶ 165 & n.280 (describing substantive amendments to the Telecommunications Reporting Worksheet instructions such as assigning liability to wholesale providers if their reseller customers are reclassified as "end users" and clarifying that a reseller did not need to be a "telecommunications service provider" but could also be any "telecommunications provider" reasonably likely to contribute).

93 *See, e.g., Request for Review of Decision of the Universal Service Administrator of XO Communications Services, Inc.*, WC Docket No. 06-122, at 33 and 37 (Dec. 29, 2010).

94 FNPRM ¶ 353.

Comcast acknowledges that, to the extent the Commission's reforms include a system that uses a contribution factor, annual modifications to the factor may be operationally simpler for contributors than the current quarterly modification schedule. The Commission must consider, however, the potential effect that such a change would have on consumers. Annual modifications to the contribution factor could result in larger incremental changes with each adjustment, which would lead to larger fluctuations in the amount that customers are billed. Consistent with the long-standing goals of the Commission in this proceeding, in Comcast's view, the negative consequences of "sticker shock" for consumers in the event of a significant increase in the factor outweigh the operational benefit to providers from a reduction in the frequency of adjustments.[95]

The Commission also seeks comment on whether it could reduce the magnitude of fluctuations in the contribution factor by extending the period of time over which adjustments are implemented.[96] This proposal, however, would introduce yet another set of calculations into a system that already requires numerous adjustments (*e.g.,* Form 499-Q), allocations, and other computations and, at best, would only reduce, not eliminate, the increased potential for consumer "sticker shock." The potential incremental benefit created by such an approach is unlikely to justify the additional administrative complexity it would introduce.

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95 *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board On Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, ¶ 27 (2000) (seeking to fashion an approach to access charge and universal service reform that would, *inter alia*, "avoid[] rate shock to consumers").

96 FNPRM ¶ 356.

C. Oversight and Accountability

Comcast believes that accountability is an important element of a properly functioning universal service contribution system and agrees that "[n]o system is fair when some telecommunications providers play by the rules and others do not."[97] The Commission, however, does not need to change its rules in order to ensure compliance with contribution obligations. Effective enforcement measures already are available. For example, the "red light" rules provide a strong incentive to make timely payments, because triggering those rules could prevent a contributor from obtaining additional numbering resources or having an application or other request for authorization processed by the Commission.[98] Moreover, violation of the Commission's contribution rules could subject a provider to assessments for accrued interest and monetary forfeitures.[99] Given the strength of existing accountability measures, the Commission does not need to adopt additional enforcement tools or performance goals to perform effective oversight of the contribution system.

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97 *Id.* ¶ 368.

98 *See* 47 C.F.R. § 1.1910.

99 *See* 47 C.F.R. §§ 54.713 and 1.80.

VIII. CONCLUSION

For the foregoing reasons, the Commission should ensure that its reform of the current USF contribution system reduces the economic burden on consumers, assesses contributions in a competitively neutral manner, minimizes uneconomic distortions and uncertainty, is administratively simple, adapts to market changes, and promotes broadband deployment.

Respectfully submitted,

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